

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

AGUSTIN GARCIA,

Petitioner,

v.

GREG BARTKOWSKI,

Respondents.

Civil Action No. 11-3689 (DRD)

**OPINION**

**APPEARANCES:**

AGUSTIN GARCIA, #822642B  
New Jersey State Prison  
P.O. Box 861  
Trenton, New Jersey 08625  
*Petitioner Pro Se*

ANNMARIE COZZI, ASSISTANT PROSECUTOR  
BERGEN COUNTY PROSECUTOR  
10 Main Street  
Hackensack, New Jersey 07601  
*Attorneys for Respondents*

**Debevoise, Senior U.S. District Judge**

On February 27, 2015, the Court denied Agustin Garcia's Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 challenging a judgment of conviction filed in the Superior Court of New Jersey, Bergen County, on February 1, 2002, and amended on May 13, 2004, after a jury found him guilty of the murder of Gladys Ricart, his former girlfriend, and related charges. The Court found that Garcia's § 2254 Petition was barred by the one-year statute of limitations and denied a certificate of appealability. Garcia filed a notice of appeal, as well as a motion for reconsideration. The Court denied the motion for reconsideration on April 16, 2015. Garcia now

seeks leave to file an over length amended petition for a certificate of appealability. The motion to file an over length amended petition for a certificate of appealability will be denied.

Section 2253 of Title 28 of the United States Code provides that an appeal may not be taken from an order denying a writ of habeas corpus under § 2254 “unless the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Section 2253 “mandates that both showings be made before the court of appeals may entertain the appeal.” Id.

In this case, the Court found that Garcia’s § 2254 Petition was barred by the one-year statute of limitations set forth in 28 U.S.C. § 2244(d)(1)(A). The Court denied a certificate of appealability because jurists of reason would not conclude that the dismissal of the Petition as time barred was debatable or incorrect. This Court sees no reason to disturb this determination or to revisit the question. The Court will file an order denying the pending motion.

s/Dickinson R. Debevoise  

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**DICKINSON R. DEBEVOISE**  
**U.S.S.D.J.**

Dated: April 23, 2015